

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOEL TOLBERT III,  
Plaintiff,

v.

CONTRA COSTA COUNTY, et al.,  
Defendants.

Case No. 21-cv-09673 EJD (PR)

**ORDER OF SERVICE ON  
DEFENDANT MURPHY;  
DIRECTING DEFENDANT TO  
FILE DISPOSITIVE MOTION OR  
NOTICE REGARDING SUCH  
MOTION; INSTRUCTIONS TO  
CLERK**

Plaintiff, a state inmate, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against officers at the Contra Costa County's Martinez Detention Facility, where he was formerly confined. The second amended complaint is the operative complaint in this action. Dkt. No. 22. When settlement proceedings were unsuccessful, the Court ordered Defendants to resubmit their motion to dismiss. Dkt. No. 27. The Court later ordered Plaintiff to provide more information for unserved Defendant Sgt. P. Murphy, and requested County Counsel to provide the current employment status and last known address for Defendant Murphy. Dkt. No. 84.

Pursuant to a court order, County Counsel subsequently filed information respecting Defendant Murphy's last known home address under seal. Dkt. No. 87. Accordingly, the Court will order service of this matter on Defendant Murphy at the address provided by County Counsel.

## CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the second amended complaint, Dkt. No. 22, all attachments thereto, a copy of the “Order of Service,” Dkt. No. 24, and a copy of this order upon Defendant P. Murphy at the address filed under seal by County Counsel. Dkt. No. 87. **The Clerk shall ensure that the address is not disclosed to Plaintiff or the public.** The Clerk shall also mail a copy of this order to Plaintiff.

Defendant Murphy may want to contact the **Office of the Contra Costa County Counsel**,<sup>1</sup> who is representing the other defendants in this action, for the purpose of obtaining representation in this matter.

2. Defendant Murphy is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires them to cooperate in saving unnecessary costs of service of the summons and the amended complaint. Pursuant to Rule 4, if Defendant, after being notified of this action and asked by the Court, on behalf of Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of such service unless good cause shown for their failure to sign and return the waiver form. If service is waived, this action will proceed as if Defendant had been served on the date that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendant will not be required to serve and file an answer before **sixty (60) days** from the day on which the request for waiver was sent. (This allows a longer time to respond than would be required if formal service of summons is necessary.) Defendant is asked to read the statement set forth at the foot of the waiver form that more completely describes the duties of the parties with regard to waiver of service of the summons. If service is waived after the date provided in the Notice but before Defendant has been personally served, the Answer shall be due sixty (60) days from

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<sup>1</sup> <https://www.contracosta.ca.gov/1370/County-Counsel>

1 the date on which the request for waiver was sent or twenty (20) days from the date the  
2 waiver form is filed, whichever is later.

3 3. No later than **ninety-one (91) days** from the date this order is filed,  
4 Defendant shall file a motion for summary judgment or other dispositive motion with  
5 respect to the claims in the complaint found to be cognizable above.

6 a. Any motion for summary judgment shall be supported by adequate  
7 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of  
8 Civil Procedure. Defendant is advised that summary judgment cannot be granted, nor  
9 qualified immunity found, if material facts are in dispute. If any Defendant is of the  
10 opinion that this case cannot be resolved by summary judgment, he shall so inform the  
11 Court prior to the date the summary judgment motion is due.

12 b. **In the event Defendant files a motion for summary judgment, the**  
13 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**  
14 **warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See**  
15 **Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

16 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court  
17 and served on Defendant no later than **twenty-eight (28) days** from the date Defendants'  
18 motion is filed.

19 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and  
20 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment  
21 must come forward with evidence showing triable issues of material fact on every essential  
22 element of his claim). Plaintiff is cautioned that failure to file an opposition to  
23 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to  
24 the granting of the motion, and granting of judgment against Plaintiff without a trial. See  
25 Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18  
26 F.3d 651, 653 (9th Cir. 1994).

27 5. Defendant shall file a reply brief no later than **fourteen (14) days** after  
28 Plaintiff's opposition is filed.

6. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

7. All communications by the Plaintiff with the Court must be served on Defendant, or Defendant's counsel once counsel has been designated, by mailing a true copy of the document to Defendant or Defendant's counsel.

8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

10. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

**IT IS SO ORDERED.**

**Dated:** May 17, 2024



EDWARD J. DAVILA  
United States District Judge